

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

CAMERON MALIK TOWNSEND

PLAINTIFF

V.

CIVIL ACTION NO. 4:22-CV-00086-RP

MDOC and PREMIER SERVICES

DEFENDANTS

MEMORANDUM OPINION AND ORDER

This matter comes before the Court, *sua sponte*, for consideration of dismissal. Cameron Malik Townsend, an inmate formerly housed at the Mississippi State Penitentiary located in Parchman, Mississippi, has filed a *pro se* civil rights action pursuant to 42 U.S.C. §1983 against Defendants MDOC and Premier Services. Doc. # 1. Having fully considered his allegations and the applicable authority, the Court finds that Townsend’s complaint must be dismissed.¹

Screening Standards

Because Townsend has been permitted to proceed *in forma pauperis* in this action,² his claims are subject to *sua sponte* dismissal under the Prison Litigation Reform Act (“PLRA”). *See* 28 U.S.C. § 1915(e)(2).³ Pursuant to the PLRA, the Court is obligated to evaluate the complaint and dismiss if it is “frivolous or malicious,” if it “fails to state a claim upon which relief may be granted,” or if it “seeks monetary relief against a defendant who is immune from such relief.” *Id.* A claim is frivolous if it “lacks an arguable basis either in law or fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). A complaint fails to state a claim upon which relief may be granted if relief could not be granted to the plaintiff “under any set of facts that would be

¹ As Townsend consented to United States Magistrate Judge jurisdiction in this case in accordance with 28 U.S.C. § 636(c), *see* Doc. # 5, the undersigned has the authority to enter this memorandum opinion and order and the accompanying judgment.

² *See* Doc. #7.

³ *See also* 28 U.S.C. § 1915A (subjecting prisoner complaint to preliminary screening regardless of *in forma pauperis* status).

proven consistent with the allegations” in the complaint. *Bradley v. Puckett*, 157 F.3d 1022, 1025 (5th Cir. 1998) (citation omitted); *see Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007) (complaint fails to state a claim only where it does not plead “enough facts to state a claim to relief that is plausible on its face”).

Plaintiff’s Allegations and Procedural Posture

In the instant action, Townsend complains about the conditions of his confinement while housed at the Mississippi State Penitentiary (“MSP”). In particular, Townsend complains about a particular incident concerning a canteen order he placed. Townsend alleges that \$273.33 was taken out of his inmate account on September 29, 2021, for the aforementioned order and that the order was to be delivered the following week.

At the time he placed the order, Townsend was housed in Building G of Unit 29 at MSP but was moved to Building L of that same unit before the order was delivered. Consequently, Townsend’s order was delivered to the wrong building. Townsend alleges that he was told by a canteen department employee that his account would be refunded in full for the order but has received no such refund to date.

Townsend filed the instant action on June 9, 2022, asserting claims under 42 U.S.C. § 1983 against Defendants MDOC and Premier Services. Doc. # 1. By way of relief, Townsend seeks \$100,000 in compensatory damages. *Id.*

Taking of Property Without Due Process of Law

Townsend’s allegations regarding the taking of his personal property, i.e., funds from his inmate account, must be dismissed for failure to state a claim upon which relief could be granted. The random and unauthorized deprivation of a prisoner’s property by a state actor does not violate the prisoner’s due process rights if the state provides an adequate post-deprivation remedy. *See Hudson v. Palmer*, 468 U.S. 517, 533 (1984); *Parratt v. Taylor*, 451 U.S. 527, 541-44 (1981), *overruled in part*

by *Daniels v. Williams*, 474 U.S. 327, 330-31 (1986). This rule, the Paratt/Hudson doctrine, provides “that no constitutional claim may be asserted by a plaintiff who was deprived of his liberty or property by negligent or intentional conduct of public officials, unless the state procedures under which those officials acted are unconstitutional or state law fails to afford an adequate post-deprivation remedy for their conduct.” *Martin v. Dallas County, Tex.*, 822 F.2d 553, 555 (5th Cir. 1987); *see also Hudson*, 486 U.S. at 533, *Daniels*, 474 U.S. at 330-31; *White v. Epps*, 411 F. App’x 731 (5th Cir. 2011). Thus, the initial question before the court as to the plaintiff’s claim regarding the taking of his property is whether Mississippi law affords him an adequate post-deprivation remedy for his loss.

In most circumstances, suits against the Mississippi government would be controlled by the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-9 (“MTCA”), which became effective on April 1, 1993. As to suits filed by prisoners, the MTCA states:

(1) A governmental entity and its employees acting and within the course scope of their employment or duties shall not be liable for any claim:

...

(m) Of any claimant who at the time the claim arises is an inmate of any detention center, jail, workhouse, penal farm, penitentiary or other such institution, regardless of whether such claimant is or is not an inmate of any detention center, jail, workhouse, penal farm, penitentiary or other such institution when the claim is filed.

Miss. Code Ann. § 11-46-9(1)(m). At first blush, this statute would seem to foreclose any remedies the plaintiff may have under state law. However, the plaintiff’s remedy for the taking of property arises directly from the Constitution of the State of Mississippi, which cannot be circumvented through a state statute. *Pickering v. Langston Law Firm, P.A.*, 88 So.3d 1269 (Miss. 2012). The unlawful taking of an inmate’s property can violate Article 3, Section 17 of the Constitution of the State of Mississippi. *Bishop v. Reagans*, 2012 WL 1804623 (S.D. Miss.), *citing Johnson v. King*, 85 So.3d 307 (Miss.App.,2012). Article 3, Section 17 of the Mississippi Constitution reads:

Private property shall not be taken or damaged for public use, except on due compensation being first made to the owner or owners thereof, in a manner to be

prescribed by law; and whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use by the public shall be a judicial question, and, as such, determined without regard to legislative assertion that the use is public.

The circumstances in Johnson are legally indistinguishable from those in the instant case. The prison officials in that case confiscated Johnson's drinking mug and disposed of it. *Johnson v. King*, 85 So.3d 307, 311-312 (Miss. App. 2012). Johnson had purchased the mug from the canteen with his own money. *Id.* The mug as purchased was not considered contraband, and Johnson had not modified the mug in such a way to turn it into contraband. *Id.* The Mississippi Court of Appeals held that, under these circumstances, the taking of Johnson's mug violated the Mississippi Constitution and that prison officials had to either replace the mug or compensate Johnson for the fair value of the mug. *Id.* Those facts mirror the facts in the present case, at least in so much as they warrant the same legal conclusion. As such, Townsend, the plaintiff in this case, has an adequate remedy under state law, and his claims for the taking of his property without due process of law must be dismissed.

MDOC Not a "Person" Under 42 U.S.C. § 1983

Even assuming, *arguendo*, that Townsend had stated a viable claim for the alleged deprivation of personal property, the complaint fails to state a claim against MDOC under Section 1983 because MDOC is not a "person" within the meaning of that statute. Section 1983 provides, in relevant part, that:

Every *person* who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress....

Thus, to maintain an action under Section 1983, a plaintiff must allege that a *person* acting under color of state law deprived him of a right secured by the Constitution or other law of the United States.

The State of Mississippi is not amenable to suit under this statute because “a State is not a person within the meaning of § 1983.” *Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 64 (1989). This holding likewise applies to “any governmental entities that are considered ‘arms of the State’ for Eleventh Amendment purposes.” *Id.* at 70. MDOC is considered an arm of the State of Mississippi. *See* Miss. Code Ann. § 47-5-1; *Scott v. Miss. Dep’t of Corrs.*, 2006 WL 1666258 (S.D. Miss. June 12, 2006). Consequently, Townsend’s allegations against MDOC will be dismissed for failure to state a claim upon which relief could be granted, as MDOC is not a proper defendant under 42 U.S.C. § 1983.

Conclusion

Based on the foregoing discussion, the Court finds that, because he has an adequate remedy under state law, Townsend’s claim(s) must fail. The Court further finds that any claim against MDOC fails because it is not a “person” within the meaning of Section 1983. Accordingly, the Court finds that Townsend’s claim for the alleged deprivation of personal property without due process of law should be **DISMISSED WITH PREJUDICE** for failure to state a claim upon which relief can be granted. 28 U.S.C. § 1915(e)(2)(B)(ii). This dismissal counts as a “strike” under 28 U.S.C. § 1915(g). Townsend is cautioned that once he accumulates three strikes, he may not proceed *in forma pauperis* in any civil action or appeal filed while incarcerated unless he is in imminent danger of some physical injury. 28 U.S.C. § 1915(g). A final judgment in accordance with this opinion will be entered today.

SO ORDERED, this the 19th day of July, 2022.

/s/ Roy Percy
UNITED STATES MAGISTRATE JUDGE